

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 03-43226-NCD

In re:

AK Medical, Inc.,

Debtor.

John R. Stoebner, Trustee,

ADV No. _____

Plaintiff,

vs.

COMPLAINT

Trinity Medical Solutions, Inc.,

Defendant.

John R. Stoebner, Trustee (“Trustee”) of the Bankruptcy Estate of AK Medical, Inc. (“Debtor” or “AK Medical”) as and for his Complaint against Defendant Trinity Medical Solutions, Inc. (“Trinity”) states and alleges as follows:

1. The Trustee is the duly appointed Chapter 7 Trustee of the Bankruptcy Estate of the Debtor.

2. This bankruptcy case was commenced on May 2, 2003, by the filing of a voluntary Chapter 7 petition (“Petition Date”).

3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This case arises under 11 U.S.C. §§ 548 and 550, and Minn.Stat. §§ 513.44 and 513.45.

5. Debtor AK Medical, Inc., is a Minnesota corporation that supplied surgical products to hospitals, including Veterans Administration (“VA”) hospitals. AK Medical’s principal place of business was 5100 Eden Avenue, Suite 112, Minneapolis, MN 55436.

6. Defendant Trinity Medical Solutions, Inc., is a Minnesota corporation that supplies surgical products to hospitals, including VA hospitals. Trinity’s principal place of business is 5100 Eden Avenue, Suite 112, Minneapolis, MN 55436.

7. AK Medical entered into multiple contracts with the United States Government to provide various supplies to VA hospitals (the “VA Contracts”).

8. Each of the various VA Contracts provided a five-year term during which AK Medical would provide various medical supplies to the VA hospitals, with the various contracts expiring at the earliest, in August 2006, and at the latest, in February 2008.

9. By “Agreement to Assign Rights to Agreements” dated January 10, 2003 (the “Assignment Agreement”), AK Medical assigned to Trinity all rights to the VA Contracts.

10. The Assignment Agreement constitutes a fraudulent transfer for less than reasonably equivalent value, as evidenced by all of the following:

- (a) Pursuant to the Assignment Agreement, AK received from Trinity the following consideration in exchange for the assignment of all rights to the VA Contracts: (i) \$1.00; and (ii) two percent (2%) of the “gross proceeds” under the VA Contracts (defined as gross sales price, less cost of products sold, discounts, taxes, credits and allowances).
- (b) Upon information and belief, Trinity took over all other aspects of AK Medical’s business, including but not limited to its property, equipment, employees, and supplies in exchange for no consideration whatsoever.

- (c) The officers of AK Medical are Anne Klus and George Klus; the officers of Trinity are Anne Klus, George Klus, and Jim Weyrens.
- (d) Anne and George Klus owned 100% of AK Medical; Anne and George Klus own 84% of the stock of Trinity.
- (e) The Assignment Agreement was not negotiated on an arms-length basis; Anne and George Klus negotiated both sides of the Assignment Agreement and the same legal counsel represented both parties to the transaction.
- (f) The employees of AK Medical were Anne Klus, George Klus, Ryan Bies and Tom Buell. The employees of Trinity are Anne Klus, George Klus and Ryan Bies.
- (g) The Assignment Agreement was executed without any formal valuation of the assets assigned to Trinity and without any analysis of current or future sales.
- (h) The Assignment Agreement contains one or more representations that both AK Medical and Trinity knew to be false; namely, the representation that “there are no actions, suits or proceedings pending, or to the knowledge of Seller, threatened against or affecting Seller”; in reality, at the time of the Assignment Agreement, AK Medical was being sued by Precept Medical Products, Inc., for more than \$310,000.
- (i) In the first two (2) quarters after execution of the Assignment Agreement, Trinity generated sales of at least \$30,000.
- (j) Upon information and belief, the VA contracts will produce revenues in excess of \$300,000.
- (k) Thus, in exchange for a total investment of \$1.00 and 2% of gross profits (not gross revenues), Trinity acquired AK Medical’s rights under the VA Contracts

to provide medical supplies to the VA hospitals that will produce revenues in excess of \$300,000.

COUNT ONE

FRAUDULENT TRANSFERS UNDER 11 U.S.C. § 548

11. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 10, inclusive, herein.

12. In whole or in part, the above-described Assignment Agreement constituted a transfer made by the Debtor or an obligation incurred by the Debtor within one year before the date of the filing of the petition.

13. The Debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the Debtor was or became, on or after the date that such transfer was made, indebted. In the alternative, the Debtor received less than a reasonably equivalent value in exchange for such transfer or obligation, and (i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; (ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the Debtor was an unreasonably small capital; or (iii) intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

14. The Debtor had at least one creditor at the time of the transfer that remained a creditor at the time of the filing of the bankruptcy petition.

15. The transfer constitutes a fraudulent transfer within the meaning of 11 U.S.C. § 548(a) which may be avoided by the Trustee and the Trustee is entitled to recover the funds transferred pursuant to 11 U.S.C. § 550.

COUNT TWO

FRAUDULENT TRANSFERS UNDER MINN. STAT. § 513.44

16. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 15, inclusive, herein.

17. In whole or in part, the above-described Assignment Agreement constituted a transfer made by the Debtor or an obligation incurred by the Debtor with actual intent to hinder, delay, or defraud any creditor of the Debtor. In the alternative, the Debtor made such transfer or incurred such obligation without receiving a reasonably equivalent value in exchange for such transfer or obligation, and the Debtor: (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed that the Debtor would incur, debts beyond the Debtor's ability to pay as they became due.

18. The Debtor had at least one creditor at the time of the transfer that remained a creditor at the time of the filing of the bankruptcy petition.

19. On behalf of creditors of the Debtor whose claims arose before or after such transfer or obligation was made, the Trustee may avoid such transfer or obligation to the extent necessary to satisfy such creditors' claims.

COUNT THREE

FRAUDULENT TRANSFERS UNDER MINN. STAT. § 513.45(a)

20. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 19, inclusive, herein.

21. In whole or in part, the above-described Assignment Agreement constituted a transfer made by the Debtor or an obligation incurred by the Debtor without receiving a

reasonably equivalent value in exchange for the transfer or obligation and the Debtor was insolvent at that time or the Debtor became insolvent as a result of the transfer.

22. The Debtor had at least one creditor at the time of the transfer that remained a creditor at the time of the filing of the bankruptcy petition.

23. On behalf of creditors of the Debtor whose claims arose before any such transfer was made or obligation was incurred, the Trustee may avoid such transfer or obligation to the extent necessary to satisfy such creditors' claims.

WHEREFORE, Plaintiff John R. Stoebner, Trustee, respectfully demands the following relief:

A. Judgment against Defendant avoiding the aforesaid transfer as a fraudulent transfer and ordering Defendant to pay over to the Plaintiff an amount in excess of \$75,000, plus pre-judgment interest from the date of commencement of this action;

B. Judgment against Defendant awarding Plaintiff his reasonable costs and disbursements; and

C. Such other and further relief as is just and equitable.

Dated: March 5, 2004

LAPP, LIBRA, THOMSON, STOEbNER
& PUSCH, CHARTERED

/e/ John R. Stoebner
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Attorneys for Plaintiff

VERIFICATION

John R. Stuebner, Trustee, Plaintiff herein, declares under penalty of perjury that he has read the foregoing Complaint and that the facts set forth therein are true and correct according to the best of his knowledge, information, and belief.

/s/ John R. Stuebner
John R. Stuebner